

## 46 Am. Jur. 2d Judges § 65

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### Judges

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### VIII. Liabilities

#### A. Civil Liability

##### 1. In General

## § 65. Actions against judge for injunctive or declaratory relief

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  35, 36

Since English law developed limited exceptions to the common-law doctrine of absolute judicial immunity, most of which involved prerogative writs, such as mandamus and prohibition, to allow superior courts to oversee inferior courts to control the proper exercise of jurisdiction,<sup>1</sup> it is generally held that neither absolute nor qualified judicial immunity insulates a judge from the reach of a court's equity power<sup>2</sup> and legislative immunity, which protects judges when they enact rules<sup>3</sup> or applies to suits for declaratory or injunctive relief.<sup>4</sup> A court is not precluded from granting either prospective injunctive relief<sup>5</sup> or declaratory relief<sup>6</sup> against judicial officers acting in their judicial capacities<sup>7</sup> or from adjudicating the merits of a claim attacking the prospective application and constitutionality of a statute or rule, where a judge is a nominal defendant and no other relief is being requested.<sup>8</sup> Neither judicial immunity nor Eleventh Amendment immunity, both of which shielded judges from being sued for damages, applied to bar an action against two state court judges in which former state court litigants requested only declaratory relief.<sup>9</sup>

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### Footnotes

- 1 [Page v. Grady](#), 788 F. Supp. 1207 (N.D. Ga. 1992).  
As to general rule of nonliability for damages in civil rights cases, see § 61.
- 2 [Society of Separationists, Inc. v. Herman](#), 939 F.2d 1207 (5th Cir. 1991), on reh'g, 959 F.2d 1283 (5th Cir. 1992).
- 3 § 70.
- 4 [Giannini v. Real](#), 711 F. Supp. 992, 15 Fed. R. Serv. 3d 559 (C.D. Cal. 1989), judgment aff'd, 911 F.2d 354 (9th Cir. 1990).

As to legislative immunity from damages, see § 72.

5 Pulliam v. Allen, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984); Berger v. Cuyahoga County Bar  
Ass'n, 983 F.2d 718 (6th Cir. 1993).

6 Society of Separationists, Inc. v. Herman, 939 F.2d 1207 (5th Cir. 1991), on reh'g, 959 F.2d 1283 (5th Cir.  
1992).

7 Pulliam v. Allen, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984); Berger v. Cuyahoga County Bar  
Ass'n, 983 F.2d 718 (6th Cir. 1993).

8 Rivera Puig v. Garcia Rosario, 785 F. Supp. 278 (D.P.R. 1992), judgment aff'd and remanded, 983 F.2d 311  
(1st Cir. 1992).

9 Cichowski v. Hollenbeck, 397 F. Supp. 2d 1082 (W.D. Wis. 2005).

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